



**OFFICE OF THE HENNEPIN COUNTY ATTORNEY**

**MICHAEL O. FREEMAN** COUNTY ATTORNEY

July 19, 2019

**VIA EMAIL ONLY**

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Re: Request regarding June 17, 2019 Meeting

Dear Ms. Walker:

I write in response to your letter dated July 15, 2019. Your letter asserts that the Hennepin County Board violated the Minnesota Open Law when it closed a meeting on June 17, and you seek additional information regarding this meeting. The June 17, 2019 meeting was a joint meeting with the Hennepin Healthcare Systems, Inc. ("HHS") Board.

There are two laws that authorize closure of meetings related to HHS matters, not just one as your letter suggests. The first is Minn. Stat. § 383B.217, subd. 7(b), which allows the Hennepin County Board to close meetings to discuss and take action on "specific [HHS] products or services that are in direct competition with other providers of goods and services in the public sector[.]" The second law is Minn. Stat. § 383B.917, subd. 2(b), which authorizes the HHS Board to:

close all or part of a board meeting when discussing competitive data or considering strategic, business, planning, or operational issues the disclosure of which, in its discretion, it determines could cause competitive disadvantage to the corporation, including causing adverse effects on the current or future competitive position of the corporation or the entities, facilities, and operations for which it is responsible.

This law was part of Chapter 125 of Minnesota Laws 2005, which authorized the Hennepin County Board to create HHS and created specific laws related to HHS's governance and operations, *see* Minn. Stat. §§ 383B.901-.928. Pursuant to Minn. Stat. § 383B.901, the Hennepin County Board has all the rights, duties, and privileges provided to HHS, including those codified at Minn. Stat. § 383B.917, subd. 2(b). Thus, the Hennepin County Board has authority to close meetings in accord with Minn. Stat. § 383B.917, pursuant to that section as well.

Your letter of July 15 asserts that at the June 17, 2019 meeting prior to its closure I stated “that [I] had reviewed the meeting agenda and the materials attached to it and that [I] believed the materials were ‘competitive data’ and the meeting could thus be closed under Minn. Stat. § 383B.217.” This is not accurate. I have reviewed the audio recording of the meeting. When asked by the Chair about closing the meeting I cited Minn. Stat. § 383B.917, which authorizes the County Board and the HHS Board to close meetings to discuss “competitive data,” and to discuss certain strategic, business, planning, or operational issues disclosure of which could cause “competitive disadvantage” to HHS. Unlike Minn. Stat. § 383B.217, Minn. Stat. § 383B.917, subd. 2(b), does not require identification of specific products or services that are in competition with those from HHS prior to closing the meeting.

As you know, in addition to my statement that the meeting could be closed pursuant to Minn. Stat. § 383B.917, the agenda for the meeting stated that the Boards would be discussing “HHS Recommendation on Strategic Initiative,” and “Principles for Partnering that Guide Explorations Going Forward.” Thus, both the legal basis and the grounds for closing the meeting were stated prior to the motion to close the meeting. Accordingly, the Hennepin County Board and the HHS Board complied with Minnesota law in closing the meeting to discuss these items; and state law does not require any more specific disclosure of the matters discussed.

However, because the competitive and strategic matter discussed at the meeting subsequently has been made public (reported on by Mr. Mannix in the Star Tribune on June 21, 2019), I can now relay to you and Mr. Mannix with more specificity that the only topic discussed at the closed meeting on June 17, 2019, was HHS’s possible strategic alliance with North Memorial.

Sincerely,

*Daniel Rogan*

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cc: Carolyn Marinan, Hennepin County  
Chuck Laszewski, Hennepin County Attorney’s Office  
Tom Hayes, Hennepin Healthcare, Inc.